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THE HONORABLE FRED VAN
SICKLE

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON
AT RICHLAND

JAMES S. GORDON, JR,

NO. CV-04-5125-FVS

Plaintiff,

v.

IMPULSE MARKETING GROUP,
INC.,

PROPOSED ORDER DISMISSING
COUNTERCLAIMS AND THIRD
PARTY DEFENDANTS UNDER FRCP
12(b)(6) OR IN THE ALTERNATIVE
FOR SUMMARY JUDGMENT UNDER
FRCP 56 OR IN THE ALTERNATIVE
TO DISMISS UNDER FRCP (9)(b)

Defendant

IMPULSE MARKETING GROUP,
INC.,

Jury Trial Demanded

Third Party Plaintiff

v.

BONNIE GORDON, JAMES S.
GORDON, III, JONATHAN
GORDON, JAMILA GORDON,
ROBERT PRITCHETT, EMILY
ABBEY, and LEW REED

Third Party Defendants

THIS MATTER comes before the court on the Motion to Dismiss

Page 1 of 5

PROPOSED ORDER, PLAINTIFFS MOTION TO
DISMISS

- No. CV-04-5125-FVS

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1 Counterclaims and Third Party Defendants under FRCP 12(b) (6) or in the
2 alternative for summary judgment under FRCP 56 or in the alternative to dismiss
3 under FRCP (9)(b) filed by Plaintiff James S. Gordon, Jr., the Court hereby finds as
4 follows:
5

6
7 1. The Plaintiff never authorized the Defendant to send the Plaintiff
8 commercial electronic messages (spam).

9 2. All of the spam that form the basis of the Plaintiff's claims in this
10 matter were sent by the Defendant after the Plaintiff had requested that the
11 Defendant stop sending spam to the Plaintiff.

12 3. Even if the Defendant's assertion that the Third Party Defendants
13 "actively and affirmatively solicited commercial emails for the sole purpose of
14 filing multiple lawsuits arising out of the receipt of these commercial email
15 messages" were true, such conduct does not form the basis of a cognizable claim
16 for any of the five causes of action, captioned "fraud and deceit," "tortious
17 interference with business relationships," "breach of contract," "injunctive relief,"
18 and "indemnification and contribution," as set forth in the Defendant's claims
19 against the Third Party Defendants.

20 4. Even if the Defendant's assertion that the Third Party Defendants
21 "actively and affirmatively solicited commercial emails for the sole purpose of
22 filing multiple lawsuits arising out of the receipt of these commercial email
23 messages" formed the basis of a cognizable claim for the Defendant's claims
24 captioned "fraud and deceit," "tortious interference with business relationships,"
25 "breach of contract," "injunctive relief," and "indemnification and contribution" as
26 set forth in the Defendant's claims against the Third Party Defendants, such claims

1 are defeated by the fact that all of the spam that form the basis of the Plaintiff's
2 claims in this matter were sent by the Defendant after the Plaintiff had requested
3 that the Defendant stop sending spam to the Plaintiff.

4 5. Even if the Defendant's assertion that the Plaintiff "actively and
5 affirmatively solicited commercial emails for the sole purpose of filing multiple
6 lawsuits arising out of the receipt of these commercial email messages" were true,
7 such conduct does not form the basis of a cognizable claim for any of the five
8 causes of action, captioned "fraud and deceit," "tortious interference with business
9 relationships," "breach of contract," "injunctive relief," and "malicious
10 prosecution," as set forth in the Defendant's counterclaims against the Plaintiff.

11 6. Even if the Defendant's assertion that the Plaintiff "actively and
12 affirmatively solicited commercial emails for the sole purpose of filing multiple
13 lawsuits arising out of the receipt of these commercial email messages" formed the
14 basis of a cognizable claim for the Defendant's counterclaims captioned "fraud and
15 deceit," "tortious interference with business relationships," "breach of contract,"
16 "injunctive relief," or "indemnification and contribution" as set forth in the
17 Defendant's counterclaims against the Plaintiff, such claims are defeated by the fact
18 that all of the spam that form the basis of the Plaintiff's claims in this matter were
19 sent by the Defendant after the Plaintiff had requested that the Defendant stop
20 sending spam to the Plaintiff.

21 7. The Defendant's counterclaims against the Plaintiff titled "fraud and
22 deceit" fail to comply with the requirements of FRCP 9(a).

23 8. The Defendant's claims against the Third Party Defendants captioned
24 "fraud and deceit" fail to comply with the requirements of FRCP 9(a).

25
26 WHEREFORE, it is hereby ORDERED that:

27 PROPOSED ORDER, PLAINTIFFS MOTION TO
DISMISS

Page 3 of 5

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- 1
- 2 a. The Defendant's claims against the Third Party Defendants
- 3 captioned "fraud and deceit," "tortious interference with business
- 4 relationships," "breach of contract," "injunctive relief," and
- 5 "indemnification and contribution" each fail to state a claim upon
- 6 which relief may be granted under FRCP 12(b)(6), and are
- 7 therefore stricken.
- 8 b. When the evidence is read in the light most favorable to the
- 9 Defendant, the evidence cannot sustain any of the Defendant's
- 10 claims against the Third Party Defendants captioned, "fraud and
- 11 deceit," "tortious interference with business relationships," "breach
- 12 of contract," "injunctive relief," and "indemnification and
- 13 contribution." Accordingly, the Plaintiff's request for Summary
- 14 Judgment is granted, and the Defendant's claims against the Third
- 15 Party Defendants are dismissed with prejudice.
- 16 c. The Defendant's counterclaims against the Plaintiff captioned
- 17 "fraud and deceit," "tortious interference with business
- 18 relationships," "breach of contract," "injunctive relief," and
- 19 "indemnification and contribution" each fail to state a claim upon
- 20 which relief may be granted under FRCP 12(b)(6), and are
- 21 therefore stricken.
- 22 d. When the evidence is read in the light most favorable to the
- 23 Defendant, the evidence cannot sustain any of the Defendant's
- 24 counterclaims against the Plaintiff, captioned "fraud and deceit,"
- 25 "tortious interference with business relationships," "breach of
- 26 contract," "injunctive relief," and "indemnification and

1 contribution.” Accordingly, the Plaintiff’s request for Summary
2 Judgment is granted, and the Defendant’s counterclaims against the
3 Plaintiff are dismissed with prejudice.

4 e. The Defendant’s counterclaims against the Plaintiff titled “fraud
5 and deceit” fail to comply with the requirements of FRCP 9(a) and
6 are therefore stricken.

7 f. The Defendant’s claims against the Third Party Defendants
8 captioned “fraud and deceit” fail to comply with the requirements
9 of FRCP 9(a) and are therefore stricken.

10
11 IT IS HEREBY ORDERED

12
13 DATED this _____ day of _____, 2005.

14
15 _____
16 HON. FRED VAN SICKLE
17 UNITED STATES DISTRICT JUDGE

18
19 Presented by:

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